

REMARKS

This response to the restriction requirement set forth in the Office Action of May 2, 2006 is made with traverse. Claims 33-35, 45-85, and 88-90 remain in this application. Claims 33-35, 45-65, 88 and 89 of Group I are provisionally elected, with claims 45-65 of Group III being further provisionally elected. Accordingly, claims 33-35 and 66-85 and 88-90 are provisionally withdrawn. Claims 1-31 and 36-44 were canceled without prejudice or disclaimer of the subject matter therein in one or more previous responses. Claims 32, 86, and 87 were canceled by the examiner in the examiner's amendment mailed with the Notice of Allowability of February 22, 2006. Authorization for the examiner's cancellation of claims 32, 86, and 87 was given by Dilip Kulkarni in a telephonic interview with the examiner on February 21, 2006. The examiner appears to have overlooked the cancellation of claims 32, 86, and 87 in the May 2, 2006 restriction requirement.

Applicants are shocked to have received the May 2, 2006 restriction requirement because all of the pending claims have already been searched, examined, and allowed as evidenced by the Notice of Allowability and the Notice of Allowance and Fee(s) Due mailed by the USPTO on February 22, 2006. On March 23, 2006 the USPTO mailed a Notice of Withdrawal from Issue under 37 CFR 1.313 and, in that paper, it was explained that “[t]he application is being withdrawn from issue to permit reopening of prosecution, **due to newly discovered prior art.**” (Emphasis added) Imagine Applicants' surprise when, upon review of the May 2, 2006 Office Action, not a single substantive claim rejection was made based on prior art, but rather the claims were being restricted. What's equally surprising is that the examiner has applied the wrong standard from the M.P.E.P. in making the restriction requirement. The present application is a National Phase of a PCT application. Accordingly the “unity of invention” standard (see section 1850 of the M.P.E.P.) is the applicable standard, not the restriction/election of species standard set forth in Chapter 800 of the M.P.E.P. In particular, the examiner cites M.P.E.P. sections 806.05(c) and 808.02 in the reasons for requiring restriction. However, the title of Chapter 800 of the M.P.E.P. is “**Restriction in Applications Filed Under 35 U.S.C. 111; Double Patenting.**” (Emphasis added) The present application was filed under 35 U.S.C. 371, not 35 U.S.C. 111. M.P.E.P section 1850 states the following:

Therefore, when the Office considers international applications as an International Searching Authority, as an International Preliminary Examining Authority, and **during the national stage as a Designated or Elected Office under 35 U.S.C. 371, PCT** Rule 13.1 and 13.2 will be followed when considering unity of invention of claims of different categories **without regard to the practice in national applications filed under 35 U.S.C. 111.**

(Emphasis added)

Because the examiner has restricted the pending claims in the present application according to the incorrect standard, it is respectfully requested that, at the least, the restriction requirement be reconsidered. Moreover, most of the claims that are pending in the present application are the same as or amended from claims that have been pending since April 1, 2002, or more than 4 years, without any mention by the USPTO that unity of invention is lacking. There have been 4 Official Actions on the merits in this application, including an Office Action mailed September 8, 2005 after a period of 2 years and 5 months in which this application laid dormant after an April 1, 2003 Office Action in which another examiner neglected to provide any reasoning for rejecting several of the claims (a Request for Clarification of the April 1, 2003 Office Action was submitted to the USPTO on May 29, 2003). In view of the lengthy period of time that this application has been pending and in view of the fact that all of the claims have been searched, examined, and allowed, not to mention the fact that the May 2, 2006 restriction requirement was based on an erroneous standard that was applied to some claims that are no longer even pending in the application (i.e., claims 32, 86 and 87), it is respectfully requested that the present application be allowed with all of the presently pending claims. In other words, it only makes common sense for the restriction requirement to be withdrawn because all of the claims have been allowed already.

Additionally, it is believed that the present set of claims meets the applicable unity of invention requirement. M.P.E.P. section 1850 further elaborates on the correct “unity of invention” standard that should be applied to the present claims as follows:

In applying PCT Rule 13.2 to international applications as an International Searching Authority, an International Preliminary Examining Authority and to national stage applications under 35 U.S.C. 371, examiners should consider for unity of invention all the claims to different categories of invention in the application and permit retention in the same application for searching and/or preliminary examination, claims to the categories which meet the requirements of PCT Rule 13.2.

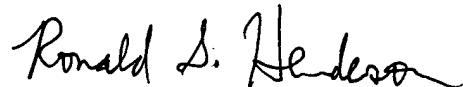
PCT Rule 13.2, as it was modified effective July 1, 1992, no longer specifies the combinations of categories of invention which are considered to have unity of invention. Those categories, which now appear as a part of Chapter 10 of the International Search and Preliminary Examination Guidelines, may be obtained from WIPO's website (www.wipo.int/pct/en/texts/gdlines.htm). The categories of invention in former PCT Rule 13.2 have been replaced with a statement describing the method for determining whether the requirement of unity of invention is satisfied. Unity of invention exists only when there is a technical relationship among the claimed inventions involving one **or more** special technical features. The term "special technical features" is defined as meaning those technical features that define a contribution which each of the inventions considered as a whole, makes over the prior art. The determination is made based on the contents of the claims as interpreted in light of the description and drawings. Chapter 10 of the International Search and Preliminary Examination Guidelines also contains examples concerning unity of invention.
(Emphasis added)

The May 2, 2006 Office Action does not demonstrate that each of the groups have a different special technical feature as required by PCT Rule 13 and reconsideration of the requirement on this basis is respectfully requested. It is submitted that unity of invention exists in the present application under the standard of PCT Rule 13.2 as explained in M.P.E.P. section 1850. In fact, because all of the claims have been allowed, it logically follows that the examiner has already concluded that the recited "technical features define a contribution which each of the inventions considered as a whole, makes over the prior art." Accordingly, the claims are in condition for allowance and such action is respectfully requested.

It is respectfully requested that, if necessary to effect a timely response, this paper be considered as a Petition for an Extension of Time sufficient to effect a timely response and that shortages in fees, if any, be charged, or any overpayment in fees credited, to the Account of Barnes & Thornburg, Deposit Account No. 10-0435 with reference to file 7175-67612.

Respectfully submitted,

BARNES & THORNBURG LLP



Ronald S. Henderson
Attorney Reg. No. 43669

Indianapolis, Indiana
317-231-7341